

FOO BAR SECTION

DOCKE FILE COPY ORIGINAL

JUN 25 1996

**Federal Communications Commission**

**DA 96-1012**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Section 76.51	)	CS Docket No. 96-139
of the Commission's Rules	)	
to Include Baytown, Galveston,	)	
Alvin, Rosenberg, Katy and	)	
Conroe, Texas in the Houston,	)	
Texas Television Market	)	

**NOTICE OF PROPOSED RULE MAKING**

**Adopted: June 21, 1996**

**Released: June 24, 1996**

**Comment Date: August 26, 1996**

**Reply Comment Date: September 16, 1996**

By the Deputy Chief, Cable Services Bureau:

1. Before the Commission is a petition for rule making filed by Pray, Inc., the licensee of television station KRTW(TV), Channel 57 (presently KVVV),<sup>1</sup> Baytown, Texas, to amend Section 76.51 of the Commission's Rules<sup>2</sup> to add the community of Baytown, Texas to the Houston, Texas television market.<sup>3</sup>

**BACKGROUND**

2. Section 76.51 of the Commission's Rules enumerates the top 100 television markets and the designated communities within those markets. Among other things, this market list is used to determine territorial exclusivity rights under Section 73.658(m) and helps define the scope of compulsory copyright license liability for cable operators.<sup>4</sup> Certain cable television syndicated

<sup>1</sup> The sale of Pray, Inc. to VVI Baytown Inc. was approved by the Commission on January 27, 1994.

<sup>2</sup> 47 C.F.R. §76.51

<sup>3</sup> See *Report and Order* in MM Docket 92-259 (Broadcast Signal Carriage Issues), 8 FCC Rcd 2965, 2977-78, n. 150 (1993).

<sup>4</sup> See 47 C.F.R. §76.658(m) and 17 U.S.C. §111(f). With passage of the Satellite Home Viewer Act of 1994, P.L. 103-369, 108 Stat. 3477 (1994) local signal copyright liability is now accorded stations throughout their mandatory cable carriage area, that is, throughout the "area of dominant influence" or ADI of the market to which the station is assigned. Although this generally reduces the importance of the Section 76.51 market list as a

exclusivity and network nonduplication rights are also determined by the presence of broadcast station communities of license on this list.<sup>5</sup> Some markets consist of more than one named community (a "hyphenated market"). Such "hyphenation" of a market is based on the premise that stations licensed to any of the named communities in the hyphenated market do, in fact, compete with all stations licensed to such communities.<sup>6</sup> Market hyphenation "helps equalize competition" where portions of the market are located beyond the Grade B contours of some stations in the area yet the stations compete for economic support.<sup>7</sup>

3. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) the distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."<sup>8</sup>

4. Section 4 of the Cable Television Consumer Protection and Competition Act of 1992,<sup>9</sup> which added Section 614 to the Communications Act of 1934,<sup>10</sup> requires the Commission to make revisions needed to update the list of top 100 television markets and their designated communities in Section 76.51 of the Commission's Rules. The Commission stated that where sufficient evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole, such cases will be

---

determinator of copyright liability, there remain situations where the list determines liability, i.e., where the 35-mile zones associated with the Section 76.51 list extend outside of the ADI of the market.

<sup>5</sup> See 47 C.F.R. Part 76, Subpart F.

<sup>6</sup> See *CATV-Non Network Agreements*, 46 FCC 2d 892, 898 (1974).

<sup>7</sup> See *Cable Television Report & Order*, 36 FCC 2d 143, 176 (1972).

<sup>8</sup> See, e.g., *TV 14, Inc. (Rome, Ga.)*, 7 FCC Rcd 8591, 8592 (1992), citing *Major Television Markets (Fresno-Visalia, California)*, 57 RR 2d 1122, 1124 (1985). See also *Press Broadcasting Company, Inc.*, 8 FCC Rcd 94, 95 (1993).

<sup>9</sup> Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

<sup>10</sup> 47 U.S.C. §614.

considered under an expedited rulemaking procedure consisting of the issuance of a Notice of Proposed Rule Making based on the submitted petition.

### THE PETITION

5. According to the petitioner, Baytown is located on the northwest coast of Galveston Bay, approximately 24 miles east of Houston. Baytown, like Houston, is located in Harris County. Houston is the largest and Baytown is the third largest city. KVVV(TV) attaches maps of its city grade and Grade A and Grade B contours, on which has been superimposed the 35-mile zones of Baytown, Houston, Galveston, Rosenberg, Alvin and Katy. These show that 98% of the Houston 35-mile zone lies within KVVV's Grade B contour and the signal contours of Alvin, Rosenberg, Katy and Galveston substantially overlap. Galveston and Conroe lie just outside the Houston 35-mile zone, but their respective 35-mile zones each include portions of Houston. Petitioner states that inclusion of Baytown, Galveston, Alvin, Rosenberg, Katy and Conroe in the Houston television market on a hyphenated basis would not significantly extend KVVV's mandatory carriage rights beyond its Grade B contour. All of the stations licensed to the several communities in the Houston ADI (with the possible exception of the Conroe station) serve substantial areas in common and compete throughout the market for programming, viewers and advertising revenues.

6. Petitioner contends that although KVVV(TV) is competitive with the other market-area stations, it is disadvantaged in this competition by having to compete with other stations in the market without comparable cable television carriage rights. Although it is entitled to carriage on area cable systems by virtue of its inclusion in the Houston ADI,<sup>12</sup> because Baytown, along with the other named communities are not designated communities in the Section 76.51 market listings, they are considered a "distant signal" for purposes of compulsory copyright license liability if carried on certain cable systems in the ADI.<sup>13</sup> As a result, petitioner states, they face additional copyright fees attendant to its carriage as a "distant signal." It also states that because of the Commission's syndicated exclusivity rule, KVVV(TV) cannot purchase non-network programming sold to Houston television stations. Petitioner alleges that it cannot both pay

---

<sup>12</sup> "Requests for specific hyphenated market changes that appear worthy of consideration will be routinely solicited and issued as rulemaking proposals." See *Report and Order* in MM Docket 92-259 (Broadcast Signal Carriage Issues), 8 FCC Rcd at 2977-78, n. 150 (1993).

<sup>13</sup> See Section 76.56(b) of the Commission's Rules.

<sup>14</sup> Stations licensed to communities specifically designated in Section 76.51 are considered local for all cable systems within the 35-mile zones of all listed communities in a given hyphenated market. The absence of Baytown, Galveston, Alvin, Rosenberg, Katy and Conroe as designated communities in this market list generally results in KVVV(TV)'s classification as a "distant signal" for market-area cable systems more than 35 miles from Houston, Texas and outside of the Houston ADI. By amending Section 76.51 of the Rules to include the communities of Baytown, Galveston, Alvin, Rosenberg, Katy and Conroe in the market as proposed, cable systems will be able to carry the signals of stations from Baytown, along with the other named communities and Houston on an equal basis in terms of copyright liability.

Houston prices for non-network programming and afford to indemnify cable systems for the added copyright fees that its carriage as a distant signal would trigger. The principal benefits of the requested change, however, is said to be parity among market stations under Section 73.658(m) of the Commission's rules (territorial exclusivity rules) and to benefit the public "by access to all stations licensed to communities within the television market, KVVV(TV)'s independent religious station and home shopping programming service, seeking to promote competition and consumer choice."

### DISCUSSION

8. Based on the facts presented, we believe that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rule making process, including the comments of interested parties. It appears from the information before us that the television stations licensed to Houston, Baytown, Galveston, Alvin, Rosenberg, Katy and Conroe do compete for audiences and advertisers throughout much of the proposed combined market area and that sufficient evidence has been presented tending to demonstrate commonality between the proposed communities to be added to the market designation and the market as a whole. Moreover, the petitioner's proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market. Accordingly, comment is requested on the proposed addition of Baytown, Galveston, Alvin, Rosenberg, Katy and Conroe to the Houston television market.

### ADMINISTRATIVE MATTERS

#### Ex Parte Rules -- Non-Restricted Proceeding

10. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. *See generally* 47 C.F.R. §§ 1.1202, 1.1203 and 1.1206(a).

#### Comment Information

11. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **August 26, 1996** and reply comments on or before **September 16, 1996**. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

Initial Regulatory Flexibility Analysis

12. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. A few cable television system operators will be affected by the proposed rule amendment. The Secretary shall send a copy of this *Notice of Proposed Rule Making* including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

Additional Information

13. This action is taken pursuant to authority delegated by Section 0.321 of the Commission's rules. For additional information on this proceeding, contact Vanessa Stallings (202) 418-7200

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson  
Deputy Chief, Cable Services Bureau